secondly, because he was not present when the gun was discharged as he was then over the wall and therefore not at the scene of the crime.

We were unable to accept this submission. In our opinion it was entirely without merit. It is not a requirement of section 5 of the Act that an accomplice in the commission or attempted commission of a criminal offence must be proved to have knowledge at the time he joins the principal that the latter is armed with a firearm. What is required is proof that the accomplice may reasonably be presumed to have knowledge that the person who used the firearm in committing or attempting to commit an offence was either (i) carrying it, or (ii) had it in his possession or (iii) had it under his control during the commission or attempted commission of that offence. The burden then shifts on the accomplice to prove that he had taken all reasonable steps to prevent the use by the principal offender of such firearm in the commission or attempted commission of that offence.

In the present case, as soon as the two appellants entered the shop, the first appellant whipped out his gun. The second appellant saw it. He admitted this in his cautioned statement. He admitted it in his evidence given on oath. He knew long before the first appellant "used" his gun within the meaning of the Act that the first appellant was carrying a gun. The second appellant did nothing about it. He took no steps at all to prevent the use of the gun by the first appellant.

The submission that the second appellant was not at the scene of the robbery when the gun was used by the first appellant does not bear examination. The second appellant admitted in his cautioned statement that he was still in the shop when he heard "one bullet sound" and that he heard "two more bullet sounds" before he rushed to the back and climbed over the wall. In his evidence given on oath he stated that he was in the back portion of the shop, and before he could climb on some crates he heard a gunshot. He was about to climb over the wall when he heard two more gunshots. It is clear from his own evidence and admissions that he was at the scene of the robbery when the first appellant used his gun. In any event, it was a finding of fact amply supported by the evidence.

There was one other submission by counsel for the second appellant. He submitted that the cautioned statement made by the second appellant to Inspector Balasubramaniam was wrongly admitted in evidence. Counsel contended that it was not a voluntary statement because the second appellant who was a heroin addict had symptoms of withdrawal at the time the statement was recorded; that he was in severe pain and did not have a free will; alternatively, that the statement was made in circumstances where the court should have considered it dangerous to admit it because the second appellant was in no condition to make a statement. It was alleged that the second appellant's mind was not lucid due to the withdrawal symptoms.

At the trial, the admission in evidence of the said cautioned statement was objected to by counsel for the second appellant and a trial within a trial was held to resolve the issue of admissibility.

At the conclusion of the trial within trial, the trial judges decided to admit the cautioned statement. In their grounds of decision they have stated: —

"Learned counsel for the second accused objected to the statement of the second accused being admitted in evidence on the grounds that at the time he made it the second accused, who is a heroin addict, was trembling and in a state of nervous shock as he had failed to take his usual dose of heroin. After hearing the evidence of the Inspector who took down the cautioned statement, the interpreter and the second accused, we were satisfied that at the time of making the cautioned statement the second accused was perfectly normal and that the statement was made freely and voluntarily. We admitted it in evidence and marked it P48."

The cautioned statement was admitted by the trial judges after a finding of fact that the second appellant when he made the statement was perfectly normal and that the statement was made freely and voluntarily. Under the circumstances there can be no grounds at all for excluding the statement.

In our judgment the trial judges were correct in deciding that the case against each appellant had been proved beyond a reasonable doubt and in convicting them on their respective charges. Their appeals against their convictions failed and were therefore dismissed.

Appeals dismissed.

Solicitors: *P. Suppiah & Co.; J.B. Jeyaretnam & Co.*

TONG KENG WAH v. PUBLIC PROSECUTOR

[A.Cr.J. (Chua J.) May 24 and October 27, 1978]
[Singapore — Magistrate's Appeal No. 68 of 1977]

Criminal Law and Procedure — Charge — Criminal breach of trust of a service revolver and ammunition belonging to government — Whether charge irregular — Former inspector charged under section 406, Penal Code — Scope of section 405 of the Penal Code and section 24(2) of the Police Force Act distinguished — Penal Code (Cap. 103), ss. 405 & 406 — Police Force Act (Cap. 78), s. 24(1) & (2).

Penal Code ss. 405 & 406 — Criminal breach of trust — "Dishonest" — Meaning of.

Police — Section 24, Police Force Act (Cap. 78).

The appellant in this case was a Police Inspector. He was issued by the Police Force with a service revolver and twelve rounds of ammunition. He was dismissed from the Force on February 14, 1975 but subsequent to his dismissal he did not deliver up the said revolver and ammunition as required under section 24(1) of the Police Force Act. He was consequently convicted on the re-amended charge for criminal breach of trust of the said revolver and ammunition and for failing to deliver them to the Police Force in violation of section 24(1) of the Police Force Act (Cap. 78), an offence punishable under section 406 of the Penal Code. He appealed. Counsel for the appellant argued, *inter alia,* that section 24(2) had created a specific offence and the appellant for failing to deliver up the revolver and ammunition should have been charged under section 24(2) of the Police Force Act and not under section 406 of the Penal Code and to have done so contravened the specific provisions of section 24(2). The court had therefore to decide whether section 405 of the Penal Code which defines criminal breach of trust, in so far as it applies to a police officer, had been repealed by section 24(2) of the Police Force Act.

Held: (1) an offence created under section 24(2) of the Police Force Act is separate and distinct from the one under section 405 of the Penal Code and there can be no question of section 24(2) repealing section 405 of the Penal Code;

(2) the manner in which the criminal breach of trust itself was committed need not be specified in the charge unless the nature of the case is such that the particulars required by sections 151 and 152 of the Criminal Procedure Code have not given the accused sufficient notice of the matter with which he is charged;

(3) the appellant had abandoned the revolver and ammunition in a dilapidated and unoccupied hut and had caused wrongful loss to the government of Singapore. There was ample evidence to support the magistrate's finding that the appellant had intended to cause this wrongful loss and consequently this disposal was "dishonest" within the meaning of section 405 of the Penal Code.

MAGISTRATE'S APPEAL.

Datuk David Marshall for the appellant.

Sowaran Singh (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Chua J.: The appellant was convicted by a Magistrate on the following re-amended charge:

"You, Tong Keng Wah are charged that you, during the period on or about 4th November, 1975 to 4th December, 1975, in Singapore, committed criminal breach of trust of a service revolver SPF No. 429 and twelve rounds of ammunition, belonging to the Government of Singapore, which were entrusted to you on the 19th February 1973 in your capacity as an Inspector attached to the Singapore Police Force, by failing to deliver up the aforesaid property to the said Force in violation of section 24(1) of the Police Force Act (Chapter 78), and have thereby committed an offence punishable under section 406 of the Penal Code (Chapter 103)."

and sentenced to three months' imprisonment. Against this conviction and sentence he now appeals.

The short facts are these. The appellant was an Inspector in the Singapore Police Force. In such capacity he was issued by the Police Force with a service revolver and twelve rounds of ammunition, the subject-matter of the charge. The appellant was dismissed from the Police Force on February 14, 1975. Subsequent to his dismissal the appellant did not deliver up the service revolver and the twelve rounds of ammunition to the Police Force but they were recovered by some members of the Police Force in an abandoned dilapidated hut in the premises of the Singapore Police Academy on December 4, 1975.

In all there are fifteen grounds of appeal but Mr. Marshall, counsel for the appellant, has argued on two grounds both relating to the charge and I have agreed to consider them first before hearing the other grounds.

The first ground of appeal taken by Mr. Marshall is that

"There was a miscarriage of justice in that the charge on which your Appellant was convicted was in flagrant violation of specific statutory provisions, to wit section 24(2) of the Police Force Act and was therefore unlawful and the trial thereon and conviction thereof were without jurisdiction and void."

The argument of Mr. Marshall is this. The charge particularises the manner in which the appellant had committed criminal breach of trust namely "by failing to deliver up the aforesaid property to the said Force in violation of section 24(1) of the Police Force Act (Cap. 78)".

Section 24(1) of the Police Force Act reads:

"Every police officer who by resignation, dismissal, discharge or otherwise leaves the Police Force, shall before leaving deliver up in good order (fair wear and tear only excepted) any arms, ammunition, accoutrement, uniform or other article supplied to him and any other property belonging to the Government which may be in his possession."

Section 24(2) of the Police Act provides that

"Any person neglecting so to deliver up such article or property shall be guilty of an offence and shall be liable on conviction to a fine not exceeding five hundred dollars or imprisonment for a term not exceeding three months, and in addition thereto shall be liable to pay the value of the article or property not delivered up which value shall be ascertained in a summary manner, by the same court by which the person was convicted, where it shall be recoverable as a fine."

Mr. Marshall says that section 24(2) has created a specific offence and the appellant for failing to deliver up the revolver and twelve rounds of ammunition should have been charged under section 24(2) of the Police Force Act and not under section 406 of the Penal Code and to have done so is to contravene the specific provisions of section 24(2).

Mr. Marshall submits that (1) Where there is an express provision creating a particular offence and a specific punishment for it, by necessary implication of law it is taken out of the general definition; (2) Where there is a specific provision in respect of punishment for a specific offence one cannot go outside that provision for punishment for that offence and (3) No general provision can derogate from a specific provision.

The authorities cited by Mr. Marshall in support of his three legal propositions are cases (1) where a later Act created the same offence as the one created by an earlier one and affixes a different punishment to it or varies the procedure applicable then the earlier Act is impliedly repealed by the later; (2) where two Acts are inconsistent or repugnant, the later will be read as having impliedly repealed the earlier.

The question for consideration is whether section 405 of the Penal Code, which defines criminal breach of trust, in so far as it applies to a police officer has been impliedly repealed by section 24(2) of the Police Force Act. What has to be determined first is whether section 405 of the Penal Code deals with the same offence as that contemplated under section 24(2) of the Police Force Act. For that purpose the provisions of the two statutes have to be analysed to understand the full scope and the import of the two.

The main ingredient of an offence under section 24(2) is that the police officer has neglected to deliver up the articles supplied to him or any other property belonging to the Government which may be in his possession.

Analysing section 405 into its component ingredients it is seen that the following essential ingredients are absolutely necessary to attract the operation of the section:—

1. The accused must be entrusted with property or dominion over property;
2. The person so entrusted must

(a) dishonestly misappropriate or convert to his own use that property, or

(b) dishonestly use or dispose of that property or wilfully suffer any other person to do so in violation

(i) of any direction of law prescribing the mode in which such trust is to be discharged, or

(ii) of any legal contract made touching the discharge of such trust.

In the above cases he is said to commit a criminal breach of trust and section 406 lays down the punishment.

A comparison of the different elements constituting the two offences clearly shows that an offence created under section 24(2) of the Police Force Act is separate and distinct from the one under section 405 of the Penal Code and there can be no question of section 24(2) repealing section 405 of the Penal Code.

This ground of appeal therefore fails.

The next ground of appeal argued by Mr. Marshall is that

"There was a miscarriage of justice in that the charge on which your appellant was convicted discloses no offence known to the law."

Mr. Marshall says that the particulars of the criminal breach of trust set out in the charge is "by failing to deliver up the aforesaid property to the said Force in violation of section 24(1) of the Police Force Act." The charge does not allege that the appellant had dishonestly disposed of the property. He submits that the retention of the service revolver and the twelve rounds of ammunition does not constitute criminal breach of trust and that the particulars set out in the charge discloses an offence under section 24(2) of the Police Force Act.

The question, therefore, is whether the charge such as it is complies with the requirements of the law.

The charge fulfils the requirements of section 151 of the Criminal Procedure Code as it has stated the offence with which the appellant is charged, namely criminal breach of trust. Then the charge specified section 406 of the Penal Code, which impliedly gives notice to the appellant of every legal condition required by law to be fulfilled in order to constitute the offence of criminal breach of trust. It has also fulfilled the requirements of section 152(1) of the Criminal Procedure Code as it has specified the thing in respect of which a criminal breach of trust had been committed. Those particulars, in my opinion, were sufficient to give the appellant notice of the matter with which he was charged.

To constitute a charge of criminal breach of trust there must be dishonest misappropriation or conversion of the property to one's own use or the accused must dishonestly use or dispose of the property in violation of any direction of law. In this case the direction of law was section 24(1) of the Police Force Act and it was only in that context that the words "by failing to deliver up the aforesaid property to the said Force in violation of section 24(1) of the Police Force Act" were used.

The manner in which the criminal breach of trust itself was committed need not be specified in the charge unless the nature of the case is such that the particulars required by sections 151 and 152 of the Criminal Procedure Code has not given the accused sufficient notice of the matter with which he is charged.

In the present case the charge gave the appellant sufficient notice of the nature of the offence alleged against him.

*This ground of appeal also fails. At the resumed hearing of this appeal, Mr. Marshall counsel for the appellant, dealt with the other grounds of appeal.

The first ground taken is this: "There was a miscarriage of justice in that: A vast mass of irrelevant, inadmissible and occasionally, prejudicial evidence (both oral and documentary) was adduced to an extent which transformed a judicial proceeding into a riot of gossip and scandal mongering."

Mr. Marshall referred the court to the evidence adduced at the trial and highlighted those evidence which he submits substantiated this ground of appeal. Now, some of the evidence (both oral and documentary) which Mr. Marshall complained of was brought out by defence counsel (not Mr. Marshall) in the cross-examination of some of the prosecution witnesses. It is correct that some of the evidence adduced was irrelevant but I find that no miscarriage of justice has occurred in this case.

The next point taken is this: "There was a miscarriage of justice in that: The court of its own motion called 5 court witnesses after the end of the Prosecution case and before the commencement of the Defence case and a 6th court witness at the end of the Defence case, who gave evidence in large part irrelevant and inadmissible and, occasionally, gravely prejudicial to the appellant."

How did the calling of the five court witnesses come about after the end of the prosecution case and before the commencement of the defence?

At the end of the prosecution case defence counsel submitted that the prosecution had failed to make out a case which if unrebutted would warrant a conviction of the appellant. After considering the submission of both the defence counsel and the Deputy Public Prosecutor the court amended the charge. The amended charge was read and explained to the appellant who claimed trial. Defence counsel then intimated that he wished to recall one of the prosecution witnesses ASP Philip Tan and also made references to certain evidence which had not been adduced by the prosecution. The Deputy Public Prosecutor intimated to the court that as far as the prosecution was concerned the witnesses and facts referred to by defence counsel were the subject of a different proceeding (a disciplinary charge) and had nothing to do with the charge the appellant was then facing and he did not propose to call them. The court then directed the Deputy Public Prosecutor to call four witnesses as the court wished to examine them under section 385 of the Criminal Procedure Code. These

* Chua J. delivered this part of his judgment on October 27, 1978. — *Mng. Ed. M.L.J.*

four witnesses were duly produced and they and ASP Philip Tan were examined by the court and were also questioned by the Deputy Public Prosecutor and defence counsel. At the conclusion of the examination of these witnesses by the court, defence counsel made a further submission to the court. The court, however, called the appellant to enter upon his defence.

The allegation of defence counsel was that the prosecution was suppressing evidence and these witnesses were called by the court at the insistence of the defence. The court called these witnesses in the interest of the appellant; the court thought that the evidence of these witnesses could throw more light on the matter before it decided if the defence should be called. I don't see how the appellant can now complain about this.

At the close of the case for the defence, the Deputy Public Prosecutor applied under section 385 to call a witness from the Immigration Department to give evidence whether the passport of the appellant had been renewed or not and there was no objection by defence counsel. The appellant had asserted that his passport had been renewed. The witness was called and treated as a court witness; the witness was examined by the Deputy Public Prosecutor and cross-examined by defence counsel.

I find that no miscarriage of justice has occurred by the calling of these six witnesses by the court.

The next point taken by Mr. Marshall is that "The Prosecution repeatedly cross-examined the appellant and others as to the character of the appellant, without leave of the court." There is no substance in this ground of appeal. In the cross-examination of some of the prosecution witnesses defence counsel sought to show that the appellant was of good character and consequently no leave of the court was necessary to cross-examine the appellant and other witnesses as to the character of the appellant.

The next ground of appeal is that "the learned Magistrate erred in holding that the appellant had "parted" with the revolver and ammunition, the subject matter of the charge," and "in holding that such "parting" amounted to "disposal" within the meaning of section 405 of the Penal Code." There is no merit in this ground of appeal. The evidence is that the appellant was in possession of the revolver and the ammunition (the properties) and later they were found in the hut. There is ample evidence to support the Magistrate's finding that the appellant had parted with the properties and this act of parting with the properties amounted to "disposal" of them.

Then it is said that the Magistrate erred "in holding that 'the appellant intended to cause wrongful loss to the Government of Singapore'." It is submitted that the parting with the properties could not cause loss to the Government because the appellant intended to return them to the police. It is argued that if the appellant had intended to cause wrongful loss he would have thrown the properties into the river. Now, the fact remains that the appellant did not return the properties to the Police and had therefore violated section 24(1) of the Police Force Act. The properties instead were abandoned in a dilapidated and unoccupied hut. In disposing of the properties in that way the appellant had caused wrongful loss to the Government of Singapore. There is ample evidence to support the Magistrate's finding that the appellant had intended to cause this wrongful loss and consequently this disposal of the properties was "dishonest" within the meaning of section 405 of the Penal Code.

The next ground taken is that the Magistrate erred in law "in failing to give adequate consideration to the alternative possibilities, raised by the evidence produced by the prosecution, consistent with the innocence of the appellant." There is no basis for this contention. It is quite clear that the Magistrate had considered the defence and rejected the evidence of the appellant and his witnesses.

The next complaint of Mr. Marshall is that the Magistrate refused the application of the defence to recall one of the prosecution witnesses, PW2 ASP Philip Tan. What transpired was this. Before the close of the case for the defence, counsel for the defence applied to recall ASP Philip Tan for cross-examination on a number of matters. The court, after hearing defence counsel, said that the defence could call the Botanist who was asked by ASP Philip Tan to examine the knapsack and to report as to how long the knapsack had been in the hut, rather than recall ASP Philip Tan. The defence then called the Botanist as a defence witness. After that the defence called another witness and closed its case. Then on the application of the prosecution the Immigration Officer was called by the court. Then submissions were made by defence counsel and by the Deputy Public Prosecutor. After that judgment was reserved and the case was fixed for further hearing on another day. At the resumed hearing the Magistrate amended the Charge which was read and explained to the appellant who claimed trial. Defence counsel then said that he had been instructed to recall ASP Philip Tan and the Botanist and go deeper into the knapsack. The court then asked what was the relevance of ASP Philip Tan's evidence whereupon defence counsel withdrew his application. I can see no ground for complaint.

The last point taken by Mr. Marshall is this: "The learned Magistrate erred in law in holding that the defence had conceded that the appellant had violated section 24(1) of the Police Force Act." There is no substance in this ground of appeal. Defence counsel in his submission at the close of the prosecution's case conceded that if the appellant had neglected to deliver the revolver and the ammunition then he was liable under the Police Force Act.

It is evident from the Grounds of Decision that the Magistrate had considered the case very carefully. The evidence is clear that the appellant is guilty of the charge.

Mr. Marshall submits that this is not a case for a custodial sentence. At the trial after his conviction defence counsel said that he was in a somewhat difficult position as he had been instructed not to plead in mitigation. The appellant has brought the trouble upon himself. All he had to do was to surrender the revolver and ammunition in accordance with the

Police Force Act. It was the simplest act to do and he would not be in all this trouble. I agree with the Magistrate that the circumstances of this case call for a stern punishment. In my view three months imprisonment is not manifestly excessive.

The appeal is dismissed.

Appeal dismissed.

Solicitors: *David Marshall.*

CHUA BOON CHIN v. J.M. McCORMACK & ORS.

[O.C.J. (D'Cotta J.) April 11, 1979]

[Singapore — Originating Summons No. 258 of 1977]

Company Law — Liquidators — Conflict of interest — Liquidator also director of company — Application to remove — Companies Act (Cap. 185), s. 266.

Liquidators — Application to remove — Court's discretion — Test applied — Companies Act (Cap. 185), s. 266.

The plaintiff in this case applied for the removal of the defendants as the liquidators of Cycle & Carriage Co. (Realty) Ltd. (hereinafter called "the company") and that they be replaced by Messrs. Beaton and Repton. The company had eight directors of whom the first defendant McCormack was one. The other two defendants, Pollett and one Tan were accountants practising in partnership with the first defendant.

The company was voluntarily wound up and the defendants were appointed liquidators on March 26, 1975.

The company's investment included 9,064,664 shares of $1/- each fully paid up in Cycle & Carriage Ltd. (hereinafter referred to as "the listed company"). Of this amount, 6,043,110 shares were in C.C.R. Holdings. The listed company was a public company listed on the Stock Exchange of Singapore. The company's share holdings amounted to 32.2% of the capital of the listed company. The plaintiff held 134,508 fully paid up shares of $1/ each of the paid up capital of the company.

The plaintiff claimed that unknown to him, on November 27, 1974 the directors of the company had transferred 6,043,110 shares of the 9,064,664 shares the company held in the listed company in exchange for an equivalent number of shares in C.C.R. Holdings.

The plaintiff contended, *inter alia,* that on August 16, 1976 he offered to sell his 92,000 shares in C.C.R. Holdings at $3.05 per share which was the value of the listed shares. However he was only offered $1.60 per share as the shares of Holdings were not listed in the Stock Exchange of Singapore. In the three years that C.C.R. Holdings were in existence, the shareholders suffered a 3.25% loss of dividend income.

Held: (1) if the court is satisfied on the evidence before it that it is against the interest of the liquidation (all those interested in the company being liquidated), that a particular person should be made liquidator, then the court has power to remove the present liquidator and then to appoint some other person in his place;

(2) the plaintiff in this case had made out a *prima facie* case of misfeasance against the directors of the company.

Cases referred to:-

(1) *Re: Sir John Moore Gold Mining Co.* (1879) 12 L.R., Ch. D. 331.

(2) *Intercontinental Properties Pty. Ltd.* [1977] 2 A.C. L.R. 488.

(3) *Bray v. Ford* [1896] A.C. 51.

(4) *Re: Adam Eyton Ltd.* (1887) 36 Ch. D. 299.

(5) *Re: George A. Bond & Co. Ltd.* (1932) 32 S.R. (N.S.W.) 301.

ORIGINATING SUMMONS.

Lai Kew Chai for the plaintiff.

A.P. Godwin for the defendants.

Cur. Adv. Vult.

D'Cotta J.: This is an application by the plaintiff for an order that the defendants be removed from their offices as the liquidators of Cycle & Carriage Co. (Realty) Ltd. (hereinafter referred to as "the Company") and that they be replaced by Messrs. D.A. Beaton and G.C.T. Repton. The application is made under section 266 of the Companies Act (Cap. 185) which provides: —

"The court may on cause shown remove a liquidator and appoint another liquidator."

The company was incorporated on February 15, 1969 under the Companies Act. The company had 8 directors of whom the 1st defendant, Mr. J.M. McCormack was one. The other two defendants, M.H.G. Pollett and Tan Swan Jeng are accountants practising in partnership with the 1st defendant under the style of Coopers & Lybrand. By a special resolution passed at an extraordinary general meeting held on March 26, 1975, it was resolved that the company be voluntarily wound-up and the defendants were appointed liquidators.

According to the Annual Report and Statement of Accounts of the company, the company as at September 30, 1974, was the owner of a piece of property then known as "Liat Towers". Liat Towers is a property situated at Orchard Road, Singapore. One of the reasons advanced by the Board of Directors of the company in calling for voluntary liquidation was that in the event of Liat Towers being sold, the company's assets would consist principally of cash and investments which in the Board's view could be handled by individual members as well as by the company.

The company's investments included 9,064,664 shares of $1 each fully paid up in Cycle & Carriage Limited (hereinafter referred to as "the listed company"). Of this amount, 6,043,110 shares are in C.C.R. Holdings Ltd. (hereinafter called "C.C.R. Holdings") whose entire assets consisted of an equivalent number of shares in the listed company. C.C.R. Holdings was formed on July 23, 1974, as the plaintiff alleges, to hold or "lock in" the 6,043,110 shares in the listed company. The listed company is at all material times a public company listed on the Stock Exchange of Singapore and its shares are traded on that Stock Exchange. The company's share holdings amounted to 32.2% of the capital of the listed company. The plaintiff at all material times was a contributory of the company. He held 134,508 fully paid up shares of $1 each of the paid up capital of the company.

The plaintiff's complaint is as follows: —

Unknown to the plaintiff, on November 27, 1974, the directors of the company had transferred 6,043,110 shares of the 9,064,664 shares the company held in the listed company in exchange for an equivalent number of shares in C.C.R. Holdings.